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7 Attorneys for Defendants  
SQUARE MILE CAPITAL MANAGEMENT LLC  
8 AND POST INVESTORS LLC

9 UNITED STATES BANKRUPTCY COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 SAN FRANCISCO DIVISION  
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13 In re  
14 POST STREET, LLC,  
15 Debtor.  
16

Case No. 11-32255-TEC

Chapter 11

17 FESTIVAL RETAIL FUND 1 228 POST  
18 STREET, LP, and POST STREET, LLC,

Adversary Proceeding Case No. 11-03143

19 Plaintiffs,  
20

**DEFENDANTS SQUARE MILE CAPITAL  
MANAGEMENT LLC'S AND POST  
INVESTORS LLC'S MOTION TO DISMISS  
PLAINTIFFS' COMPLAINT**

21 v.

**Hearing:**

22 EUROHYPO AG aka EUROHYPO AG,  
NEW YORK BRANCH; POST  
23 INVESTORS, LLC; SQUARE MILE  
CAPITAL MANAGEMENT LLC; FIRST  
24 AMERICAN TITLE INSURANCE  
COMPANY, and DOES 1-10,

Date: September 2, 2011  
Time: 10:00 a.m.  
Dept.: Courtroom 23, 23rd Floor

25 Defendants.  
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1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendants Post  
3 Investors LLC (“Post Investors”) and Square Mile Capital Management LLC (“Square Mile,”  
4 together with Post Investors, the “Square Mile Defendants”) hereby move this Court for an Order  
5 dismissing the Complaint of Plaintiff Festival Retail Fund I 228 Post Street, LP (“Festival”) and  
6 Plaintiff/Debtor Post Street, LLC (“Post Street,” together with Festival, “Plaintiffs”).

7 The Motion is made on the ground that Plaintiffs have not alleged facts sufficient  
8 to state a claim against the Square Mile Defendants. Specifically, the Square Mile Defendants  
9 move to dismiss the claims against them on the following grounds:

- 10 • Injunctive Relief: The claim for injunctive relief against the Square Mile  
11 Defendants fails procedurally because it is not a cause of action and substantively  
12 because Plaintiffs seek to enjoin an assignment that was effective under New York  
13 law, regardless of whether the assignment allegedly breached a covenant not to  
14 assign. Such an alleged breach could only create a breach of contract claim for  
15 damages against the assignor, Eurohypo;
- 16 • Breach of Contract: The claim for breach of contract against Post Investors fails  
17 because Plaintiffs do not allege specific facts excusing their lack of performance;  
18 to the contrary, Plaintiffs allege purported breaches of contract that occurred in  
19 March 2011, eight months after their unexcused default;
- 20 • Fiduciary Duty: The claim for breach of fiduciary duty against Post Investors fails  
21 because Plaintiffs specifically agreed through contract that the relationship was an  
22 ordinary debtor-creditor relationship, and no facts have been pled that would  
23 establish any fiduciary relationship;
- 24 • Constructive Trust: The claim for constructive trust against Post Investors fails  
25 because a constructive trust will not be imposed in the absence of a fiduciary  
26 relationship;
- 27 • Tortious Interference with Contractual Relations: The claim for tortious  
28 interference with contractual relations against the Square Mile Defendants fails

1 because Plaintiffs have not pled (1) that any contract between Plaintiffs and a third  
2 party was breached, (2) that such a breach was induced by the Square Mile  
3 Defendants, or (3) that the Square Mile Defendants' acts of inducement were  
4 malicious or illegal;

- 5 • Declaratory Relief: The claim for declaratory relief against the Square Mile  
6 Defendants fails because (1) the claim is matured and duplicative of other claims,  
7 and (2) the underlying matters on which Plaintiffs seek a declaration are precluded  
8 as a matter of law.

9 This Motion is based upon the Notice of Hearing, the Memorandum of Points and  
10 Authorities, the Request for Judicial Notice and the Declaration of Sean T. Strauss, all of which  
11 are filed herewith, the pleadings and records on file in this action and any additional matters of  
12 which judicial notice may be taken, and such additional authorities and argument as may be  
13 presented in any reply and at the hearing on this Motion.

14 Dated: August 3, 2011

STEIN & LUBIN LLP

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16 By: /s/ Sean T. Strauss

17 SEAN T. STRAUSS  
18 Attorneys for Defendants  
19 SQUARE MILE CAPITAL MANAGEMENT LLC  
20 and POST INVESTORS, LLC  
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